



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

February 27, 2013

MEMORANDUM

To: Representative Weininger

From: Joseph T. Kreye, Sr. Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **2013 un-introduced** (LRB-1317/2) by **DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

February 26, 2013

TO: Joe Kreye
Legislative Reference Bureau

FROM: Paul Ziegler
Department of Revenue

SUBJECT: Technical Memorandum on 2013 LRB 1317/2 – relating to sales tax holidays in August and in November.

The department has the following concerns with the bill:

1. The Streamlined Sales and Use Tax Agreement (SSUTA) requires member states to provide notice of a temporary exemption period at least 60 days prior to the first day of the calendar quarter in which the exemption period will begin. The department needs an additional 30 days to prepare and distribute the notice to retailers. Depending on when the bill is enacted, the department may not have sufficient time to provide the required notice to retailers for sales tax holidays during 2013. An initial applicability provision could be used to address uncertainty regarding the effective date.
2. The SSUTA states that member states may not require a seller to obtain an exemption certificate from purchasers of items to be exempted during a sales tax holiday. The department suggests the bill be revised to amend sec. 77.52(13) to include references to the exemptions added by the bill to avoid the exemption certificate requirement.
3. The bill does not provide procedural requirements for certain transactions that may occur during the exemption periods, such as layaway sales, bundled sales, splitting of items normally sold together, rain checks, exchanges, delivery charges, order dates, returns, coupons, and other discounts. The department suggests that the bill be modified to incorporate the procedural requirements listed in Section 322.C of the SSUTA.
4. The SSUTA definitions for "clothing, "clothing accessories or equipment," "sport and recreational equipment" and "protective equipment" specify that the definitions are mutually exclusive. Of these product categories, the bill only provides an exemption for clothing. In order to comply with the streamlined requirement of mutually exclusive definitions and to clarify the tax treatment of products that may be interpreted to fall under multiple definitions (including, for example, waders and cleated shoes), the department suggests the bill be modified to include the mutually exclusive definitions for "clothing, "clothing accessories or equipment," "sport and recreational equipment" and "protective equipment" used in the SSUTA Library of Definitions.

5. The bill gives DOR the authority to prohibit the sales tax holidays if DOR determines that allowing the sales tax holidays would be "imprudent". The author of the bill may wish to give the department additional guidance for the exercise of this authority, or alternatively, provide the Joint Committee on Finance with passive review authority over the department's determination.
6. If there is a change in the energy efficiency guidelines under the Energy Star program, it may be unclear whether the previous guidelines or the revised guidelines apply for purposes of the exemption. If it is the intent that the guidelines that are to apply are those that are in effect at the time of the sale of the equipment, it is suggested that the bill be revised to clarify this treatment.
7. Approximately 1,100 retailers registered with Wisconsin by October 1, 2009 when Wisconsin became a full member state to the SSUTA agreement. If Wisconsin does not conform to the SSUTA and consequently loses its membership, those out-of-state retailers that do not have a legal requirement to register in Wisconsin would no longer be obligated to collect sales and use taxes for Wisconsin and this would result in a decrease in sales tax revenues.
8. The bill creates complexity for retailers because of the various price caps for the exemption. Retailers will have to know which products are eligible for the exemption based on product type and sales price.

If you have questions regarding this technical memorandum, please contact Bob Schmidt at (608) 267-9892 or robertk1.schmidt@revenue.wi.gov.